

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

MARTHA AMMONS,

Plaintiff,

v.

ALLY FINANCIAL, INC.,

Defendant.

CASE NO: 3:17-0505

Judge Crenshaw/Brown

Jury Demand

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**NOTICE OF FILING SUPPLEMENTAL AUTHORITY IN SUPPORT
OF PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff, Martha Ammons, through the undersigned counsel, hereby notifies the Court of the attached supplemental authority: (1) *Swaney v. Regions Bank*, No.: 2:13-cv-00544-JHE (N.D. Ala. May 22, 2018) (attached hereto as **Exhibit A**).

On May 22, 2018, the District Court in *Swaney v. Regions Bank* granted the plaintiff’s motion for partial summary judgment finding that “the Defendant’s system is an ATDS under the TCPA.” *Id.*, at *3. Prior to reaching this conclusion, the parties submitted supplemental briefing on the recent *ACA International* decision and the District Court found that “the D.C. Circuit invalidated certain portions of the 2015 Order, but not the portion of the Order reaffirming the FCC’s 2003 determination that, ‘while some predictive dialers cannot be programmed to generate random or sequential phone numbers, they still satisfy the statutory definition of an ATDS.’” *Id.*, at *2. While, the defendant attempted to argue that the plaintiff was not entitled to summary judgment because, following *ACA International*, “to be an ATDS, equipment must have the capacity to store or produce numbers using a random or sequential number generator,” the District Court explicitly held that such argument “cannot be squared with the **continuing**

validity of the 2003 FCC Order.” (emphasis added) *Id.*, at *3. Ultimately, the District Court found that the plaintiff was “entitled to partial summary judgment on the issue of whether the Defendant’s system is an ATDS under the TCPA” because she “presented sufficient evidence to demonstrate that the system at issue has the capacity to dial numbers (i.e., send text messages) without human intervention.” *Id.*, at *3.

For reasons already extensively briefed in this matter, as outlined by the Southern District of Florida in its recent decision in *Reyes v. BCA Fin. Servs., Inc.*, No.: 1:16-cv-24077-JG (S.D. Fla. May 14, 2018), and as further outlined in the most recent decision attached hereto, there is no question that predictive dialers (such as the one used by the Defendant) were, are and remain an ATDS for purposes of the TCPA.

Accordingly, Plaintiff would respectfully request that this Court take into consideration the attached Order when ruling on Plaintiff’s presently pending Motion for Partial Summary Judgment [Doc. 69].

DATED: May 22, 2018.

Respectfully submitted,

/s/ **Shaughn C. Hill**
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of May, 2018, the foregoing, **NOTICE OF FILING SUPPLEMENTAL AUTHORITY IN SUPPORT OF PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT**, was filed electronically in accordance with the Court's guidelines, using the Court's CM/ECF system, and a copy of which was served via electronic mail to the following:

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